

IN RE MUSTY DONUT TIMBER SALE

IBLA 99-43

Decided September 27, 1999

Appeal from a decision of the Butte Falls Area Manager, Medford, Oregon, District Office, Bureau of Land Management, denying a protest of a proposed timber sale. OR110-TS98-06.

Appeal dismissed, decision affirmed.

1. Contests and Protests: Generally--Rules of Practice: Appeals--Timber Sales and Disposals

A protest of a timber sale notice must be received by BLM within 15 days of the date of publication of the notice, and a protest received after the 15-day period is untimely. A person must file a timely protest of the notice with BLM to have standing to appeal the rejection of the protest to the Interior Board of Land Appeals.

APPEARANCES: Tom Dimitre, Ashland, Oregon, for Headwaters.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Headwaters (Headwaters or appellant) has appealed from a September 30, 1998, decision of the Butte Falls Area Manager, Bureau of Land Management (BLM), denying its protest of a Decision Record dated August 26, 1998, implementing the Musty Donut timber sale project. This project proposes to harvest timber in secs. 27, 29, 31, and 35, T. 33 S., R. 2 W., and secs. 3, 4, 5, 9, and 10, T. 34 S., R. 2 W., Willamette Meridian, Jackson County, Oregon. BLM's decision denied appellant's protest on the basis that it was untimely filed, but nonetheless answered the protest point by point, finding also that there was no substantive basis for the protest.

BLM has responded to Headwaters' appeal, moving the Board to summarily dismiss the appeal and stay request. It contends that to appeal a timber sale notice, a person must have filed a timely protest of that notice, and asserts that it did not receive the protest filed by Headwaters within 15 days of the first publication of the notice of the timber sale, as required by 43 C.F.R. § 5003.3. BLM asserts that the timber sale notice

was first published in a newspaper of general circulation on August 27, 1998, and indicates that protests are to be received by BLM within 15 days of that publication date. BLM avers:

[A] timely protest of the Musty Donut Timber Sale was required to be received by BLM on or before September 11, 1998. The protest letter was received via fax after closing on September 11, 1998 (case file exhibit 3). The fax was stamped in on September 14, 1998 two days after the deadline. The regulations state, "Protests received more than 15 days after publication of the notice of decision or the notice of sale are not timely filed and shall not be considered." 43 C.F.R. 5003.3(c) * * *. The regulations do not provide for a waiver of the deadline for filing protest of timber sales.

(BLM Response at 1.)

Headwaters has not disputed BLM's determination that the protest was untimely, but instead has argued that BLM did not supply it with a copy of the Decision Record until September 8, 1998, 3 days before the protest was due, and that this is "routine and commonplace." Headwaters requests that the Board "recognize the hardship brought upon us by the BLM's refusal to release documents in a timely manner," and consider the protest timely. (Statement of Reasons at 2.)

[1] To appeal a timber sale notice, a person must first protest that notice to BLM. Friends and Residents of Log Creek, 142 IBLA 15, 16 (1997); Sierra Club, Grand Canyon Chapter, 136 IBLA 358, 362 (1996). The applicable regulations provide that "[p]rotests of a forest management decision, including advertised timber sales, may be made within 15 days of publication of a notice of decision or notice of sale in a newspaper of general circulation." 43 C.F.R. § 5003.3(a). The regulations further state that "[p]rotests received more than 15 days after the publication of the notice of decision or the notice of the sale are not timely and shall not be considered." 43 C.F.R. § 5003.3(c) (emphasis supplied). This is a "strict" time limitation with no extensions of time or exceptions for late filing. Friends and Residents of Log Creek, *supra*; Sierra Club, Grand Canyon Chapter, *supra* at 361; Idaho Conservation League, 131 IBLA 11, 12 (1994); G. Jon Roush, 112 IBLA 293, 297 (1990).

The notice of the Musty Donut Timber Sale, published on August 27, 1998, explicitly states: "This sale notice, first published on August 27, 1998, constitutes the decision document for purposes of protests under 43 CFR Subpart 5003 - Administrative Remedies. Protests of any sale listed below must be filed within 15 days after the first publication of this notice." Therefore, a timely protest of the Musty Donut Timber Sale was required to be received by BLM during business hours on or before September 11, 1998, 15 days after the August 27, 1998, first publication date. See In re Fire Fly Timber Sale, 114 IBLA 94, 95 (1990).

Headwaters' protest was conveyed by facsimile after business hours on Friday, September 11, 1998, in the Medford District Office, but was not date-stamped as received by BLM until September 14, 1998. Departmental regulation 43 C.F.R. § 4.22(a) provides that "[a] document is filed in the Office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it."

Accordingly, BLM did not receive the protest until September 14, 1998, which was after the 15-day protest period closed. Because Headwaters did not protest the sale decision in a timely manner, it is precluded from appealing the timber sale to the Board. Friends and Residents of Log Creek, supra at 17; Sierra Club, Grand Canyon Chapter, supra at 362. As the regulations do not authorize waiver of the deadline for filing for any reason, the motion to dismiss the appeal filed on behalf of BLM is granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Headwaters' appeal of the Misty Donut Timber Sale is dismissed for failure to file a protest in a timely manner, its request for stay is denied as moot, and the September 30, 1998, decision is affirmed.

James P. Terry
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

